

SECOND REGULAR SESSION

# SENATE BILL NO. 598

90TH GENERAL ASSEMBLY

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INTRODUCED BY SENATOR STEELMAN.

Pre-filed December 1, 1999, and 1,000 copies ordered printed.

TERRY L. SPIELER, Secretary.

2452S.051

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## AN ACT

To repeal section 660.300, RSMo 1994, relating to in-home care for the elderly, and to enact in lieu thereof three new sections relating to the same subject, with penalty provisions.

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*Be it enacted by the General Assembly of the State of Missouri, as follows:*

Section A. Section 660.300, RSMo 1994, is repealed and three new sections enacted in lieu thereof, to be known as sections 660.300, 660.670 and 660.673, to read as follows:

660.300. 1. [Beginning January 1, 1993,] When any physician, dentist, chiropractor, optometrist, podiatrist, intern, nurse, medical examiner, social worker, psychologist, minister, Christian Science practitioner, peace officer, pharmacist, physical therapist, in-home services owner, in-home services operator, in-home services employee, or employee of the department of social services or of the department of health or of the department of mental health has reasonable cause to believe that an in-home services client has been abused or neglected, as a result of in-home services, he **or she** shall immediately report or cause a report to be made to the department.

2. Any person required in subsection 1 of this section to report or cause a report to be made to the department who fails to do so within a reasonable time after the act of abuse or neglect is guilty of a class A misdemeanor.

3. The report shall contain the names and addresses of the in-home services provider agency, the in-home services employee, the in-home services client, information regarding the nature of the abuse or neglect, the name of the complainant, and any other information which might be helpful in an investigation.

4. In addition to those persons required to report under subsection 1 of this section, any

**EXPLANATION--Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.**

other person having reasonable cause to believe that an in-home services client has been abused or neglected by an in-home services employee may report such information to the department.

5. Upon receipt of a report, the department shall **notify the medical director if the report involves an in-home services client and the medical director shall** initiate a prompt and thorough investigation **within twenty-four hours**.

6. If the investigation indicates possible abuse or neglect of an in-home services client, the investigator shall refer the complaint together with his **or her** report to the [department] **medical** director or his **or her** designee for appropriate action. If, during the investigation or at its completion, the [department] **medical director** has reasonable cause to believe that immediate removal is necessary to protect the in-home services client from abuse or neglect, the **medical director, the** department or the local prosecuting attorney may, or the attorney general upon request of the department shall, file a petition for temporary care and protection of the in-home services client in a circuit court of competent jurisdiction. The circuit court in which the petition is filed shall have equitable jurisdiction to issue an ex parte order granting the department authority for the temporary care and protection of the in-home services client, for a period not to exceed thirty days.

7. Reports shall be confidential, as provided under section 660.320.

8. Anyone, except any person who has abused or neglected an in-home services client, who makes a report pursuant to this section or who testifies in any administrative or judicial proceeding arising from the report shall be immune from any civil or criminal liability for making such a report or for testifying except for liability for perjury, unless such person acted negligently, recklessly, in bad faith, or with malicious purpose.

9. Within five working days after a report required to be made under this section is received, the person making the report shall be notified in writing of its receipt and of the initiation of the investigation. **If the report is made by a physician of the in-home services client, then the office of the medical director for in-home services clients shall maintain contact with the physician regarding the progress of the investigation.**

10. No person who directs or exercises any authority in an in-home services provider agency shall harass, dismiss or retaliate against an in-home services client or an in-home services employee because he or any member of his **or her** family has made a report of any violation or suspected violation of laws, standards or regulations applying to the in-home services provider agency or any in-home services employee which he has reasonable cause to believe has been committed or has occurred.

11. Any person who knowingly abuses or neglects an in-home services client shall be guilty of a class D felony. **If such person is an in-home services employee and upon a determination of guilt, the supervising in-home services provider will be subject to administrative penalties of one thousand dollars per violation to be collected by the**

department and the money received therefor shall be paid to the director of revenue and deposited in the state treasury to the credit of the general revenue fund. Upon three or more employee violations pursuant to this section, the department may terminate its contract with the in-home services provider. Any in-home services provider which has had administrative penalties imposed by the department or which has had its contract terminated may seek an administrative review of the department's action pursuant to chapter 621, RSMo. Any decision of the administrative hearing commission may be appealed to the circuit court in the county where the violation occurred for a trial de novo.

12. The department shall maintain the employee disqualification list and place on the employee disqualification list the names of any persons who have been finally determined by the department, pursuant to section 660.315, to have recklessly, knowingly or purposely abused or neglected an in-home services client while employed by an in-home services provider agency.

**660.670. 1. There is hereby established within the division of aging the "Office of the Medical Director for In-Home Services Clients". The office shall be administered by a medical director.**

**2. As used in sections 660.300 and 660.670, the term "medical director" shall mean a person employed by the division for in-home services clients, who is a physician licensed in Missouri pursuant to chapter 334, RSMo, and who shall devote his or her entire time to duties of his or her position for the purposes of helping to assure the adequacy of care received by in-home services clients and to improve the quality of life experienced by them.**

**3. The office shall establish and implement procedures for receiving, processing, responding to, and resolving complaints made by or on behalf of clients of in-home services relating to action, inaction, or decisions of providers, or their representatives, of in-home care services, of public agencies or of social service agencies, which may adversely affect the health, safety, welfare or rights of such clients.**

**4. The division shall follow the procedures outlined in section 660.300 for resolution of complaints.**

**5. The medical director or representatives of the office shall have the authority to:**

**(1) Enter the home of any in-home services client and have access to in-home services clients and client records, with the client's permission, at a reasonable time and in a reasonable manner to ensure the proper provision of services. The medical director, the department, and a physician licensed in Missouri pursuant to chapter 334, RSMo, who is contracted with the client's in-home services provider to provide evaluation or care on an as-needed basis shall evaluate the client's condition and may require a specified number of random visits by a nurse, registered pursuant to chapter**

**335, RSMo, who is contracted with the client's in-home services provider. In-home services clients shall have the right to request visits with the medical director;**

**(2) Make the necessary inquiries and review such information and records as the medical director or representative of the office deems necessary to accomplish the objective of verifying complaints.**

**6. The office shall acknowledge complaints, report its findings, make recommendations, gather and disseminate information and other material, and publicize its existence, pursuant to section 660.300.**

**7. The medical director shall recommend to the department of social services changes in the rules and regulations adopted or proposed by the department which do or may adversely affect the health, safety, welfare, or civil or human rights of any in-home services client. The office shall analyze and monitor the development and implementation of federal, state and local laws, regulations and policies with respect to in-home services in the state and shall recommend to the division changes in such laws, regulations and policies deemed by the office to be appropriate.**

**8. The department shall develop and establish statewide policies and standards for implementing the activities of the medical director program, including the qualifications and the training of regional in-home services coordinators and caseworkers.**

**9. The office shall prepare and distribute to each in-home services provider, employee, and client or the client's guardian written notices which set forth the address and telephone number of the office, a brief explanation of the function of the office, the procedure to follow in filing a complaint and other pertinent information.**

**10. The office shall inform clients, their guardians or their families of their rights and entitlements under state and federal laws and rules and regulations by means of the distribution of educational materials and group meetings.**

**660.673. The sovereign immunity of the division of aging from liability and suit for compensable damages for negligent acts or omissions is hereby expressly waived for injuries directly arising out of the care, treatment or statutorily directed services provided by the division. Immunity is waived for injuries directly inflicted by employees and those directly resulting from the negligent selection, inspection, supervision or control over independent contractors.**

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